

REMARKS

Claims 37-57 are pending in the application.

Claims 37, 38, 40-44, 46-53 and 55-57 have been rejected.

Claims 39, 45, 54 and 56 have been objected to.

Claims 37, 49 and 55 have been amended and reconsideration is respectfully requested.

New Claim 58 has been added.

I. **INDICATED ALLOWABILITY OF CLAIMS 39, 45, 54 AND 56**

Applicant thanks the Examiner for the indication that Claims 39, 45, 54 and 56 are objected to but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. At this time, Applicant has elected not to rewrite these claims.

II. **DOUBLE PATENTING REJECTION**

Claims 37-42, 43-48, 49-54, 55 and 56 were rejected on the grounds of nonstatutory double patenting over various claims in U.S. Patent No. 6,751,198. The rejection is respectfully traversed. Applicant notes the Examiner's indication that this rejection will be in all future correspondence until resolved, and Applicant is prepared to submit a timely and proper terminal disclaimer when this rejection is the only remaining rejection of the claims.

III. **REJECTION UNDER 35 U.S.C. § 102**

Claims 37, 38, 40-44, 46-53, 55 and 57 were rejected under 35 U.S.C. § 102(b) as being anticipated by Andersson (US Patent No. 4,322,793).¹ The rejection is respectfully traversed.

¹ The rejections of independent Claim 49 and dependent Claims 40, 46 and 57 appear to be rejections under 103, instead of 102, since the Office Action concedes that Andersson fails to disclose a voice packet. Office Action, page 3. As with the 102 rejections, Andersson fails to disclose one or more elements in each of the independent Claims, therefore the 103 rejections should be withdrawn.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

The Office Action cites to Col. 5, line 60 through Col. 6, line 60 and Col. 13, lines 29-45 (and Figures 1 and 2) of Andersson as disclosing Applicant's "timer" and "processor operable for setting a transmit bit in an outgoing packet and starting a timer when the transmit bit is set, and for reading a receive bit in a received packet and stopping the timer when the receive bit is read" as set forth in independent Claim 37.² For ease of reference, these two cited passages of Andersson are set forth below in their entirety:

... The "Adapter Enabled" bit, when on, brings the BA into the idle state from which all normal functions are started. When off, it puts the BA in a state where it does not react to any activity on the PIO BUS. Trap requests are degated. For testing of the PIO BUS, the off condition is used to keep the BA hardware inactive and allow the microcode to have complete control over all activity on that bus. The "Interval Timer Enable" bit, when on, enables interval timer traps. When off, it does not allow any interval timer trap to occur. This bit also resets any interval timer trap condition which may be present. The "Address Extension Enable" bit, when off, allows the BA to only address adapters on the PIO Bus in address range 0-7 during Interrupt Response Mode (IRM). When on, it extends the address capability to a maximum of 16 addressable adapters. ... (Col. 5, line 60 through Col. 6, line 61)

The ICA Start/Stop (S/S) Line Control Facility provides a link between the Channel Service Facility and the function of the Common Communications Adapter (CCA) in controlling asynchronous lines.

² The Office Action appears to cite to these same passages to support the 102 rejections of independent Claims 43 (method), 49 (system) and 55 (network device).

As previously stated, in asynchronous line control, the Start/Stop Line Control Facility provides a link to the Common Communications Adapter (CCA) 11 at the front end of ICA. For Start/Stop operations, the CCAs serialize/deserialize a byte, buffer one data byte, control the attached data communications equipment (DCE) and sense DCE conditions, establish transmit and receive bit timing, perform interval timer functions in accordance with the ICC, append Start and Stop bits onto transmitted bytes, test each received byte for a valid Stop bit and for odd parity, remove Start and Stop bits from each byte received, test each byte received for an all zero condition and indicate when a Break sequence is being received, and transmit a continuous zero bit pattern as a Break sequence. (Col. 13, lines 29-47)

Nothing in the above cited portions of Andersson discloses or describes (1) setting a transmit bit in an outgoing packet and starting a timer when the transmit bit is set, or (2) reading a receive bit in a received packet and stopping the timer when the receive bit is read.

Andersson is directed to a communications controller for a data processing system where the entire communications controller is transparently integrated into the host CPU. Andersson, Col. 1, lines 8-10, 35-37. The Office Action asserts that Col. 13, lines 29-45 describe that “start/stop operations are performed based on transmit and receive bits within a byte” and that the “stop bit in the received byte is read to stop the timer accordingly.” Office Action, page 3. To the contrary, this portion of Andersson merely discloses that for “Start/Stop” operations, the CCAs (Common Communication Adapters) establish transmit and receive bit timing, perform interval timer functions in accordance with ICC, append Start and Stop bits onto transmitted bytes, and test each received byte for a valid Stop bit. Andersson, Col. 13, lines 36-44. The Office Action fails to cite to any portion of Andersson which explains or describes that the CCA starts a timer when a transmit bit is set in an outgoing packet and reads a received bit in a received packet and stops the timer in response thereto. Andersson merely describes that the CCA “perform[s] interval timer functions in accordance with ICC” or “test[s] each received byte for a valid Stop bit.” Moreover, the reference in Andersson to “establish bit transmit and receive bit timing” and “append Start and Stop bits onto transmitted bytes” appear to refer to establishing bit timing for bits since the link to the CCA is an asynchronous line. Andersson,

Cool 13, lines 29-35. In addition, it appears that the “Start/Stop operations” are identifying starting and stopping points for each transmitted byte and/or for starting and stopping the CCA’s data communications.³ Andersson, Col. 13, lines 27 through Col. 16.

Applicant respectfully submits that Andersson fails to disclose each and every element identically as recited in the claimed invention.

However, to advance prosecution, independent Claims 37, 49 and 55 have been amended to recite the processor is operable for: (1) setting a transmit bit in an outgoing packet to a network, (2) reading a receive bit in a received packet from the network, and (3) monitoring a delay time of the network. Nothing in the cited portions of Andersson discloses or describes the recited outgoing packet is sent to a network and the recited received packet is received from a network. Moreover, Andersson does not appear to disclose or describe its processor is operable for monitoring a delay time of the network. Therefore, the cited portions of Andersson fail to anticipate independent Claims 37, 49 and 55 (and their dependent Claims). In addition, the cited portions of Andersson fail to describe or disclose a transmitting state machine or a receiving state machine as recited in independent Claim 43 (and its dependent Claims).

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 37, 38, 40-44, 46-53, 55 and 57.

IV. NEW CLAIM 58

New Claim 58 has been added, and Applicant respectfully submits that for the same or similar reasons set forth above, Claim 58 is patentable over the cited reference.

³ Notably, Andersson is not even remotely related to measuring round trip delay of voice packets in a network.

V. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Nortel Networks Deposit Account No. 14-1315.

Respectfully submitted,

MUNCK CARTER, LLP

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Robert D. McCutcheon
Registration No. 38,717

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3632 (direct dial)
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: *rmccutcheon@munckcarter.com*